52.8(2) *How to compute the credit.* The credit is 6 percent of the taxable wages paid to employees in new jobs or jobs directly related to new jobs for the taxable year in which the taxpayer elects to take the credit.

EXAMPLE 1. A taxpayer enters into an agreement to increase employment by 20 new employees which is greater than 10 percent of the taxpayer's base employment level of 100 employees. In year one of the agreement the taxpayer hires 20 new employees but elects not to take the credit in that year. In year two of the agreement only 18 of the new employees hired in year one are still employed and the taxpayer elects to take the credit. The credit would be 6 percent of the taxable wages of the 18 remaining new employees. In year three of the agreement the taxpayer hires two additional new employees under the agreement to replace the two employees which left in year two and elects to take the credit. The credit would be 6 percent of the taxable wages paid to the two replacement employees. In year four of the agreement three of the employees for which a credit had been taken left employment and three additional employees were hired. No credit is available for these employees. A credit can only be taken one time for each new job or job directly related to a new job.

EXAMPLE 2. A taxpayer operating two plants in Iowa enters into a chapter 260E agreement to train new employees for a new product line at one of the taxpayer's plants. The base employment level on the date of the agreement at plant A is 300 and at plant B is 100. Under the agreement 20 new employees will be trained for plant B which is greater than a 10 percent increase of the base employment level for plant B. In the year in which the taxpayer elects to take the credit, the employment level at plant A is 290 and at plant B is 120. The credit would be 6 percent of the wages of 10 new employees at plant B as 10 new jobs were created by the industry in the state. A credit for the remaining 10 employees can be taken if the employment level at plant A increases back to 300 during the period of time that the credit can be taken.

52.8(3) *When the credit can be taken.* The taxpayer may elect to take the credit in any tax year which either begins or ends during the period beginning with the date of the agreement and ending with the date by which the project is to be completed under the agreement. However, the taxpayer may not take the credit until the base employment level has been exceeded by at least 10 percent.

EXAMPLE: A taxpayer enters into an agreement to increase employment from a base employment level of 200 employees to 225 employees. In year one of the agreement the taxpayer hires 20 new employees which is a 10 percent increase over the base employment level but elects not to take the credit. In year two of the agreement 2 of the new employees leave employment. The taxpayer elects to take the credit which would be 6 percent of the taxable wages of the 18 employees currently employed. In year three the taxpayer hires 7 new employees and elects to take the credit. The credit would be 6 percent of the taxable wages of the seven new employees.

A shareholder in an S corporation may claim the pro-rata share of the Iowa new jobs credit on the shareholder's individual tax return. The S corporation shall provide each shareholder with a schedule showing the computation of the corporation's Iowa new jobs credit and the shareholder's pro-rata share. The shareholder's pro-rata share of the Iowa new jobs credit shall be in the same ratio as the shareholder's pro-rata share in the earnings of the S corporation. All shareholders of an S corporation shall elect to take the Iowa new jobs credit the same year.

Any new jobs credit in excess of the corporation's tax liability less the credits authorized in Iowa Code sections 422.33, 422.91, and 422.110 may be carried forward for ten years or until it is used, whichever is the earliest.

This rule is intended to implement Iowa Code section 422.33.

701—52.9(422) Seed capital income tax credit. A corporate taxpayer making an investment in an initial offer of securities by a qualified business or a qualified seed capital fund is allowed an income tax credit equal to 10 percent of the amount of the investment. In order to qualify for the credit, investment must be made on or after July 1, 1991, but prior to January 1, 1996.

52.9(1) *Definitions.*

a. For the purposes of this rule, the term "agricultural processing" means the processing of agricultural products. Agricultural products are things which have a situs of their production upon the farm and which are brought into condition for uses of society by labor of those engaged in agricultural pursuits as contradistinguished from manufacturing or other industrial pursuits. In Re *Rodgers*, 134 Neb. 832, 279 N.W. 800, 803, 1988 O.A.G. 51.

b. For the purposes of this rule, the term "assembling products" means collection or gathering together parts and placing them in their proper relation to each other. *Citizen's Nat. Bank v. Bucheit* 71 So. 82.

c. For the purposes of this rule, the term "fishery processing" means the processing of fish. Fish are animals which inhabit the water, breathe by means of gills, swim by the aid of fins, and are oviparous. The term includes crabs, *State v. Savage*, 96 Or. 53, 184 P. 567, 570; escallops, *State v. Dudley*, 182 N.C. 822, 109 S.E. 63, 65; and mussels and other shellfish, *Gratz v. McKee*, C.C.A. MO., 258 F. 335, 336.

d. For the purposes of this rule, the term "forest processing" means the processing of timber. Timber means trees, felled or standing, that are suitable to be used for building. *Feneley v. Kimmell*, 29 N.W.2d 289.

e. For the purposes of this rule, the term "manufacturing" is the creation of a new and different article which has a distinctive name, character, and use, but construction of a building is not considered manufacturing nor is engineering; and manufacturing is nearly always associated with the use of manual or mechanical energy and the word is not ordinarily used to describe products of labor entirely or mainly intellectual or clerical in character. *Hazen Engineering Co. v. City of Pittsburgh*, 151 A.2d 855.

f. For the purposes of this rule, the term "person" includes individual, corporation, business trust, estate, trust, partnership, association, or any other legal entity.

g. For the purposes of this rule, the term "processing" means an operation or a series of operations whereby tangible personal property is subjected to some special treatment by artificial or natural means which changes its form, context, or condition, and results in marketable tangible personal property. These operations are commonly associated with fabricating, compounding, germinating, or manufacturing. Quarrying is not processing, but crushing and screening of limestone after quarrying is processing. *Linwood Stone Products Co. v. State Department of Revenue*, 175 N.W.2d 393 (Iowa 1970).

"Processing" begins when the "form, context, or condition" of tangible personal property is changed with the intent of eventually transforming the property into a salable finished product. The severance of raw material from real estate is not processing, even if this severance results in a change in the form, context, or condition of the real estate. *Linwood Stone Products Co. v. State Department of Revenue*, 175 N.W.2d 393 (Iowa 1970). Furthermore, transportation of raw material after it is severed from real estate, but prior to the time the initial change in the form, context, or condition of the raw material occurs, is not processing. *Southern Sioux County Rural Water System, Inc. v. Iowa Department of Revenue*, 383 N.W.2d 585 (Iowa 1986).

"Processing" ends when the property being processed is in the form in which it is ultimately intended to be sold at retail, *Hy-Vee Food Stores v. Iowa Department of Revenue*, 379 N.W.2d 37 (Iowa 1985). The storage or transport of property after that property is transformed into a finished product is not a part of processing.

h. For the purposes of this rule, the term "research and development" means not only fundamental research but also applied research such as testing and experimental construction and production.

i. For the purposes of this rule, the term "unaffiliated and nonrelated person, partnership, or corporation" means that the taxpayer does not have one or more of the following relationships with the entity in which the investment is made:

(1) Members of a family which include only wife or husband; brother or sister (including half-brother and half-sister); father, mother, grandparent, or any other ancestor; and children, grandchildren, or any other descendants.

(2) An individual and a corporation more than 50 percent in value of the outstanding stock of which is owned, directly or indirectly, by or for the individual.

(3) Two corporations which are members of the same controlled group of corporations as defined in Section 267(f) of the Internal Revenue Code.

(4) A grantor and a fiduciary of any trust.

(5) A fiduciary of a trust and the fiduciary of another trust if the same person is the grantor of both trusts.

(6) A fiduciary of a trust and a beneficiary of the trust.

(7) A fiduciary of a trust and a beneficiary of another trust if the same person is the grantor of both trusts.

(8) A fiduciary of a trust and a corporation more than 50 percent in value of the outstanding stock of which is owned, directly or indirectly, by or for the trust or by or for a person who is a grantor of the trust.

(9) A corporation and a partnership if the same persons own more than 50 percent in value of the outstanding stock of the corporation and more than 50 percent of the capital interest or the profits interest in the partnership.

(10) An S corporation and another S corporation if the same persons own more than 50 percent in value of the outstanding stock of each corporation.

(11) An S corporation and a C corporation if the same persons own more than 50 percent in value of the outstanding stock of each corporation.

j. For the purposes of this rule, the constructive ownership of stock will be determined as follows:

(1) Stock owned, directly or indirectly, by or for a corporation, partnership, estate, or trust will be considered as being owned proportionately by or for its shareholders, partners, or beneficiaries;

(2) An individual will be considered as owning the stock owned, directly or indirectly, by or for the individual's family;

(3) An individual owning, otherwise than by application of (2) above, any stock in a corporation will be considered as owning the stock owned, directly or indirectly, by or for the individual's partner;

(4) The family of an individual includes the individual's brothers and sisters (including half-brothers and half-sisters), spouse, ancestors, lineal descendants, and persons related to each other by blood, marriage or adoption; and

(5) Stock constructively owned by a person by reason of the application of (1) above will, for the purpose of applying (1), (2), or (3) above be treated as actually owned by the person, but stock constructively owned by an individual by reason of the application of (2) or (3) above will not be treated as owned by the individual for the purpose of again applying either of (2) or (3) above in order to make another the constructive owner of the stock.

k. For the purposes of this rule, to determine the constructive ownership of a capital interest or profits interest of a partnership the principles of paragraph *"j"* above will apply, except:

(1) Subparagraph (3) of paragraph *"j"* above will not apply; and

(2) Interests owned (directly or indirectly) by or for a C corporation will be considered as owned by or for any shareholder only if the shareholder owns (directly or indirectly) 5 percent or more in value of the stock of the corporation.

52.9(2) *Seed capital fund.*

a. In order to qualify, investors in the fund for the seed capital credit must meet all of the following conditions:

(1) The investments must be in shares or other equity interests, which are purchased for money consideration and carry voting rights, and

(2) The issue of shares or other equity interests must be registered under an expedited registration by a filing system as provided in Iowa Code section 502.207A.

b. Its capital base must be used to make investments exclusively in the following types of businesses:

(1) Interstate or intrastate commerce for the purpose of manufacturing, processing, or assembling products,

(2) Agricultural, fishery, or forestry processing, or

(3) Research and development of products and processes associated with any of the activities enumerated in (1) and (2).

c. Its capital base must be used to make qualified investments according to the following schedule:

(1) Invest at least 30 percent of its capital base, raised through investments for which tax credits were taken, within three years of the fiscal year in which tax credits were claimed.

(2) Invest at least 50 percent of its capital base, raised through investments for which tax credits were taken, within four years of the fiscal year in which the tax credits were claimed.

(3) Invest at least 70 percent of its capital base, raised through investments for which tax credits were claimed, within five years of the fiscal year in which tax credits were claimed.

(4) More than 20 percent of the total funds raised for which tax credits were claimed must not be invested in any one qualified business.

52.9(3) *Qualified business.* In order to be a qualified business for purposes of qualifying investments in the business for the seed capital credit, all of the following conditions must be met:

a. The business must be engaged in interstate or intrastate commerce for the purpose of manufacturing, processing, or assembling products; agricultural, fishery, or forest processing; research and development of products and processes associated with the above activities;

b. The shares offered by the business for purposes of the seed capital credit must be purchased by the taxpayer investor for money consideration and the shares must carry full voting rights;

c. The shares must be offered in an offering registered under an expedited registration by filing system as provided in Iowa Code section 502.207A.

52.9(4) *Tax treatment of disposal of investment within two years.* If during the tax year the investment or a portion of the investment in the seed capital fund or the qualified business is disposed of prior to having been owned by the taxpayer for two years, the tax is increased by the amount of the credit taken on the investment or portion of the investment. For example, a corporation made a $10,000 investment for 100 shares in a qualified seed capital fund in December 1991 and claimed a $1,000 seed capital income tax credit on the 1991 return of the corporation. In August 1992, the taxpayer sold 50 of the shares for $4,000. On the taxpayer's 1992 return, the taxpayer must increase the tax liability by $500 to account for the credit that is recaptured because of the taxpayer's failure to hold the seed capital shares for the two-year holding period.

If a taxpayer makes an investment in a seed capital fund or a qualified business in a tax year and disposes of the investment during the tax year, no tax credit will be allowed and recapture of the credit will not be necessary.

52.9(5) *Carryover of the seed capital credit.* If the seed capital credit for which the taxpayer qualifies is greater than the state income tax liability of the taxpayer for the tax year in which the investment was made, the portion of this credit which exceeds the liability may be carried over to the subsequent tax year. If the remaining seed capital is not used in the subsequent tax year, the credit may be carried over to the income tax returns for the following four tax years or until the credit is exhausted. In a situation where a taxpayer's seed capital credit is greater than the taxpayer's liability for the year the credit arises and the next five years, the unused portion of the credit expires.

52.9(6) *Investments eligible for the seed capital credit.* If a taxpayer makes an investment in securities offered by a seed capital fund or a qualified business, the taxpayer will be eligible for the seed capital income tax credit only if the investment is in an unaffiliated and unrelated person, partnership, or corporation.

52.9(7) *Statement of qualified investment to be included in the income tax return.* A taxpayer who wants to claim a seed capital income tax credit for an investment in a qualified seed capital fund or qualified business must include a copy of a signed statement from a corporate officer or designated agent of the seed capital fund or qualified business with the corporation income tax return to attest to the corporate investment in the fund or qualified business. The signed statement must provide a statement to the effect that the person who signed the statement is subject to the penalty of perjury if the statement on the form is not accurate.

52.9(8) *Seed capital funds or qualified businesses may be subject to audit.* Seed capital funds or qualified businesses which qualify investors for the seed capital income tax credit will be subject to audit by the department of revenue and finance to ascertain if all qualifications and conditions for the credit have been met.

52.9(9) *Filing annual reports with the department.* The issuer of shares qualifying for the seed capital fund income tax credit must file a copy of its annual report with the department for the first year in which the shares are offered as well as annual reports for the following two years. These reports are to be sent to the address shown below:

Iowa Department of Revenue and Finance
Audit and Compliance Division
Hoover State Office Building
P.O. Box 10456
Des Moines, Iowa 50306

This rule is intended to implement Iowa Code section 422.33.

701—52.10(15) New jobs and income program tax credits. For tax years ending after May 1, 1994, for programs approved after May 1, 1994, an investment tax credit under Iowa Code section 15.333 and an additional research activities credit under Iowa Code section 15.335 are available to an eligible business.

52.10(1) *Definitions:*

a. *"Eligible business"* means a business meeting the conditions of Iowa Code section 15.329.

b. *"Improvements to real property"* includes the cost of utility lines, drilling wells, construction of sewage lagoons, parking lots and permanent structures. The term does not include temporary structures.

c. *"Machinery and equipment"* means machinery used in manufacturing establishments and computers except point-of-sales equipment as defined in Iowa Code section 427A.1. The term does not include computer software.

d. *"New investment directly related to new jobs created by the location or expansion of an eligible business under the program"* means the cost of machinery and equipment purchased for use in the operation of the eligible business which has been depreciated in accordance with generally accepted accounting principles and the cost of improvements to real property.

For the cost of improvements to real property to be eligible for an investment tax credit, the improvements to real property must have received an exemption from property taxes under Iowa Code section 15.332. Replacement machinery and equipment and additional improvements to real property placed in service during the period of property tax exemption by an eligible business qualify for an investment tax credit.

52.10(2) *Investment tax credit.* An investment tax credit of up to 10 percent of the new investment which is directly related to new jobs created by the location or expansion of an eligible business is available. The credit is available for machinery and equipment or improvements to real property placed in service after May 1, 1994. The credit is to be taken in the year the qualifying asset is placed in service. For business applications received on or after July 1, 1999, for purposes of the investment tax credit claimed under Iowa Code section 15.333, the cost of land and any buildings and structures located on the land will be considered to be a new investment which is directly related to new jobs for purposes of determining the amount of new investment upon which an investment tax credit may be taken. If the eligible business, within five years of purchase, sells, disposes of, razes, or otherwise renders unusable all or a part of the land, buildings, or other existing structures for which tax credit was claimed under this subrule, the income tax liability of the eligible business for the year in which all or part of the property is sold, disposed of, razed, or otherwise rendered unusable shall be increased by one of the following amounts:

a. One hundred percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within one full year after being placed in service.

b. Eighty percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within two full years after being placed in service.

c. Sixty percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within three full years after being placed in service.

d. Forty percent of the tax credit claimed if the property ceases to be eligible for the tax credit within four full years after being placed in service.

e. Twenty percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within five full years after being placed in service.

Any credit in excess of the tax liability for the tax year may be carried forward seven years or until used, whichever is the earlier.

If the business is a partnership, S corporation, limited liability company, or an estate or trust electing to have the income taxed directly to an individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

52.10(3) *Research activities credit.* An additional research activities credit of 6½ percent of the state's apportioned share of "qualifying expenditures" is available to an eligible business. The credit is available for qualifying expenditures incurred after May 1, 1994. The additional research activities credit is in addition to the credit set forth in Iowa Code section 422.33(5).

See rule 701—52.7(422) for the computation of the research activities credit.

See also subrule 52.7(3) for the computation of the research activities credit for tax years beginning on or after January 1, 2000, and subrule 52.7(4) for the research activities credit for an eligible business for tax years beginning on or after January 1, 2000.

Any credit in excess of the tax liability for the tax year may be carried forward seven years or until used, whichever is the earlier. This is in contrast to the research activities credit in Iowa Code section 422.33(5) where any credit in excess of the tax liability for the tax year may be carried forward until used or refunded. For tax years ending on or after July 1, 1996, the additional research activities credit may at the option of the taxpayer be refunded.

If the business is a partnership, S corporation, limited liability company, or an estate or trust electing to have the income taxed directly to an individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

This rule is intended to implement Iowa Code sections 15.333 and 15.335.

701—52.11(422) Refunds and overpayments.

52.11(1) to **52.11(6)** Reserved.

52.11(7) *Computation of interest on refunds resulting from net operating losses or net capital losses for tax years or periods beginning on or after January 1, 1974.* If the amount of tax for any year is reduced as a result of a net operating loss or net capital loss carryback from another year, interest shall accrue on the refund resulting from the loss carryback beginning at the close of the taxable year in which the net operating loss or net capital loss occurred or 60 days after payment of the tax, whichever is later. If the net operating loss or net capital loss carryback to a prior year eliminates or reduces an outstanding assessment or underpayment of tax for the prior year, the full amount of the outstanding assessment or underpayment shall bear interest at the statutory rate from the original due date of the tax for the prior year to the last day of the taxable year in which the net operating loss or net capital loss occurred.

52.11(8) *Computation of interest on refunds resulting from net operating losses or net capital losses for tax years or periods beginning on or after January 1, 1974, and ending on or after July 1, 1980.* If the amount of tax for any year is reduced as a result of a net operating loss or net capital loss carryback from another year, interest shall accrue on the refund resulting from the loss carryback beginning at the close of the taxable year in which the net operating loss or net capital loss occurred or 30 days after payment of the tax, whichever is later. If the net operating loss or net capital loss carryback to a prior year eliminates or reduces an outstanding assessment or underpayment of tax for the prior year, the full amount of the outstanding assessment or underpayment shall bear interest at the statutory rate from the original due date of the tax for the prior year to the last day of the taxable year in which the net operating loss or net capital loss occurred.

52.11(9) *Computation of interest on refunds resulting from net operating losses or net capital losses for tax years ending on or after April 30, 1981.* If the amount of tax is reduced as a result of a net operating loss or a net capital loss carryback, interest shall accrue on the refund resulting from the loss carryback beginning at the close of the taxable year in which the net operating loss or net capital loss occurred or the first day of the second calendar month following the actual payment date, whichever is the later.

52.11(10) *For refund claims received by the department after June 11, 1984.* If the amount of tax is reduced as a result of a net operating loss or net capital loss, interest shall accrue on the refund resulting from the loss carryback beginning on the date a claim for refund or amended return carrying back the net operating loss or net capital loss is filed with the department or the first day of the second calendar month following the actual payment date, whichever is later.

52.11(11) *Overpayment—interest accruing before July 1, 1980.* If the amount of tax determined to be due by the department is less than the amount paid, and the date of payment occurred prior to April 30, 1980, interest shall accrue from 60 days after the date of payment, at the statutory rate, to the date refunded.

52.11(12) *Interest commencing on or after January 1, 1982.* See rule 701—10.2(421) regarding the rate of interest charged by the department on delinquent taxes and the rate paid by the department on refunds commencing on or after January 1, 1982.

52.11(13) *Overpayment—interest accruing on or after July 1, 1980, and before April 30, 1981.* If the amount of tax determined to be due by the department is less than the amount paid, and the date of payment occurred on or after April 30, 1980, and before April 30, 1981, interest shall accrue from 30 days after the date of payment or due date of the return, whichever is the later, at the statutory rate, to the date refunded. Date of payment means the date the return is filed.

52.11(14) *Overpayment—interest accruing on overpayments resulting from returns due on or after April 30, 1981.* If the amount of tax determined to be due by the department is less than the amount paid, the excess to be refunded will accrue interest from the first day of the second calendar month following the date of payment or the date the return was due to be filed or was filed, whichever is the later.

This rule is intended to implement Iowa Code section 422.25.

701—52.12(422) Deduction of credits. The credits against computed tax set forth in Iowa Code section 422.33 shall be deducted in the following sequence.

1. Seed capital credit.
2. New jobs credit.
3. Investment tax credit.
4. Research activities credit under Iowa Code section 15.335.
5. Alternative minimum tax credit.
6. Research activities credit.
7. Motor fuel credit.
8. Estimated tax and payments with extensions.

This rule is intended to implement Iowa Code sections 15.333, 15.335, 422.33, 422.91 and 422.110.

701—52.13(422) Livestock production credits. For rules relating to the livestock production income tax credit refunds see rule 701—43.8(422).

This rule is intended to implement 1996 Iowa Acts, chapter 1197, sections 19, 20, and 21.

701—52.14(422) Enterprise zone tax credits. An eligible business in an enterprise zone may take the following tax credits:

1. New jobs credit from withholding as provided in Iowa Code section 15.331 (see rule 701—52.8(422)).
2. Investment tax credit as provided in Iowa Code section 15.333 (see rule 701—52.10(15)).
3. Research activities credit as provided in Iowa Code section 15.335 (see rule 701—52.10(15) for tax years ending after May 1, 1994, but prior to tax years beginning on or after January 1, 2000) and subrule 52.7(5) for the research credit for increasing research activities within a quality jobs enterprise zone for tax years beginning on or after January 1, 2001.

This rule is intended to implement Iowa Code sections 15A.9(8) and 15E.186.

701—52.15(15E) Eligible housing business tax credit. A corporation which qualifies as an eligible housing business may receive a tax credit of up to 10 percent of the new investment which is directly related to the building or rehabilitating of homes in an enterprise zone. The tax credit may be taken on the tax return for the tax year in which the home is ready for occupancy.

An eligible housing business is one which meets the criteria in 1998 Iowa Acts, chapter 1179.

New investment which is directly related to the building or rehabilitating of homes includes but is not limited to the following costs: land, surveying, architectural services, building permits, inspections, interest on a construction loan, building materials, roofing, plumbing materials, electrical materials, amounts paid to subcontractors for labor and materials provided, concrete, labor, landscaping, appliances normally provided with a new home, heating and cooling equipment, millwork, drywall and drywall materials, nails, bolts, screws, and floor coverings.

New investment does not include the machinery, equipment, hand or power tools necessary to build or rehabilitate homes.

A taxpayer may claim on the taxpayer's corporation income tax return the pro-rata share of the Iowa eligible housing business tax credit from a partnership, limited liability company, estate, or trust. The portion of the credit claimed by the taxpayer shall be in the same ratio as the taxpayer's pro-rata share of the earnings of the partnership, limited liability company, or estate or trust.

Any Iowa eligible housing business tax credit in excess of the corporation's tax liability may be carried forward for seven years or until it is used, whichever is the earlier.

If the eligible housing business fails to maintain the requirements of 1998 Iowa Acts, chapter 1179, to be an eligible housing business, the taxpayer may be required to repay all or a part of the tax incentives the business received. Irrespective of the fact that the statute of limitations to assess the taxpayer for repayment of the income tax credit may have expired, the department may proceed to collect the tax incentives forfeited by failure to maintain the requirements of 1998 Iowa Acts, chapter 1179. This is because it is a recovery of an incentive, rather than an adjustment to the taxpayer's tax liability.

This rule is intended to implement 1998 Iowa Acts, chapter 1179.

701—52.16(422) Franchise tax credit. For tax years beginning on or after January 1, 1998, a shareholder in a financial institution as defined in Section 581 of the Internal Revenue Code which has elected to have its income taxed directly to the shareholders may take a tax credit equal to the shareholder's pro-rata share of the Iowa franchise tax paid by the financial institution.

The credit must be computed by recomputing the amount of tax computed under Iowa Code section 422.33 by reducing the shareholder's taxable income by the shareholder's pro-rata share of the items of income and expenses of the financial institution and deducting from the recomputed tax the credits allowed by Iowa Code section 422.33. The recomputed tax must be subtracted from the amount of tax computed under Iowa Code section 422.33 reduced by the credits allowed in Iowa Code section 422.33.

The resulting amount, not to exceed the shareholder's pro-rata share of the franchise tax paid by the financial institution, is the amount of tax credit allowed the shareholder.

This rule is intended to implement Iowa Code section 422.33, as amended by 1999 Iowa Acts, chapter 95.

701—52.17(422) Assistive device tax credit. Effective for tax years beginning on or after January 1, 2000, a taxpayer who is a small business that purchases, rents, or modifies an assistive device or makes workplace modifications for an individual with a disability who is employed or will be employed by the taxpayer may qualify for an assistive device tax credit, subject to the availability of the credit. The assistive device credit is equal to 50 percent of the first $5,000 paid during the tax year by the small business for the purchase, rental, or modification of an assistive device or for making workplace modifications. Any credit in excess of the tax liability may be refunded or applied to the taxpayer's tax liability for the following tax year. If the taxpayer elects to take the assistive device tax credit, the taxpayer is not to deduct for Iowa income tax purposes any amount of the cost of the assistive device or workplace modification that is deductible for federal income tax purposes. A small business will not be eligible for the assistive device credit if the device is provided for an owner of the small business unless the owner is a bona fide employee of the small business.

52.17(1) *Submitting applications for the credit.* A small business wanting to receive the assistive device tax credit must submit an application for the credit to the Iowa department of economic development and provide other information and documents requested by the Iowa department of economic development. If the taxpayer meets the criteria for qualification for the credit, the Iowa department of economic development will issue the taxpayer a certificate of entitlement for the credit. However, the aggregate amount of assistive device tax credits that may be granted by the Iowa department of economic development to all small businesses during a fiscal year cannot exceed $500,000. The certificate for entitlement of the assistive device credit is to include the taxpayer's name, the taxpayer's address, the taxpayer's tax identification number, the estimated amount of the tax credit, the date on which the taxpayer's application was approved and the date when it is anticipated that the assistive device project will be completed and a space on the application where the taxpayer is to enter the date that the assistive device project was completed. The certificate for entitlement will not be considered to be valid for purposes of claiming the assistive device credit on the taxpayer's Iowa income tax return until the taxpayer has completed the assistive device project and has entered the completion date on the certificate of entitlement form. The tax year of the small business in which the assistive device project is completed is the tax year for which the assistive device credit may be claimed. For example, in a case where taxpayer A received a certificate of entitlement for an assistive device credit on September 15, 2000, and completed the assistive device workplace modification project on January 15, 2001, taxpayer A could claim the assistive device credit on taxpayer A's 2001 Iowa return assuming that taxpayer A is filing returns on a calendar-year basis.

The department of revenue and finance will not allow the assistive device credit on a taxpayer's return if the certificate of entitlement or a legible copy of the certificate is not attached to the taxpayer's income tax return. If the taxpayer has been granted a certificate of entitlement and the taxpayer is an S corporation, where the income of the taxpayer is taxed to the individual owner(s) of the business entity, the taxpayer must provide a copy of the certificate to each of the shareholders with a statement showing how the credit is to be allocated among the individual owners of the S corporation. An individual owner is to attach a copy of the certificate of entitlement and the statement of allocation of the assistive device credit to the individual's state income tax return.

52.17(2) *Definitions.* The following definitions are applicable to this subrule:

"Assistive device" means any item, piece of equipment, or product system which is used to increase, maintain, or improve the functional capabilities of an individual with a disability in the workplace or on the job. "Assistive device" does not mean any medical device, surgical device, or organ implanted or transplanted into or attached directly to an individual. "Assistive device" does not include any device for which a certificate of title is issued by the state department of transportation, but does include any item, piece of equipment, or product system otherwise meeting the definition of "assistive device" that is incorporated, attached, or included as a modification in or to such a device issued a certificate of title.

"Business entity" means partnership, limited liability company, S corporation, estate or trust, where the income of the business is taxed to the individual owners of the business, whether the individual owner is a partner, member, shareholder, or beneficiary.

"Disability" means the same as defined in Iowa Code section 225C.46. Therefore, "disability" means, with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of the individual, a record of physical or mental impairment that substantially limits one or more of the major life activities of the individual, or being regarded as an individual with a physical or mental impairment that substantially limits one or more of the major life activities of the individual. "Disability" does not include any of the following:

1. Homosexuality or bisexuality;
2. Transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders, or other sexual behavior disorders;
3. Compulsive gambling, kleptomania, or pyromania;
4. Psychoactive substance abuse disorders resulting from current illegal use of drugs;
5. Alcoholism.

"Employee" means an individual who is employed by the small business who meets the criteria in Treasury Regulation § 31.3401(c)-1(b), which is the definition of an employee for federal income tax withholding purposes. An individual who receives self-employment income from the small business is not to be considered to be an employee of the small business for purposes of this rule.

"Small business" means that the business either had gross receipts in the tax year before the current tax year of $3 million or less or employed not more than 14 full-time employees during the tax year prior to the current tax year.

"Workplace modifications" means physical alterations to the office, factory, or other work environment where the disabled employee is working or is to work.

52.17(3) *Allocation of credit to owners of a business entity.* If the taxpayer that was entitled to an assistive device credit is a business entity, the business entity is to allocate the allowable credit to each of the individual owners of the entity on the basis of each owner's pro-rata share of the earnings of the entity to the total earnings of the entity. Therefore, if an S corporation has an assistive device credit for a tax year of $2,500 and one shareholder of the S corporation receives 25 percent of the earnings of the corporation, that shareholder would receive an assistive device credit for the tax year of $625 or 25 percent of the total assistive device credit of the S corporation.

This rule is intended to implement Iowa Code section 422.33.

701—52.18(422) Property rehabilitation tax credit. A property rehabilitation credit, subject to the availability of the credit, may be claimed against a taxpayer's Iowa corporate income tax liability for 25 percent of the qualified costs of rehabilitation of property to the extent the costs were incurred on or after July 1, 2000, for the rehabilitation of eligible property in Iowa. The administrative rules for the property rehabilitation credit for the historical division of the department of cultural affairs may be found under 223—Chapter 48.

52.18(1) *Eligible property for the rehabilitation credit.* The following types of property are eligible for the property rehabilitation credit:

a. Property verified as listed on the National Register of Historic Places or eligible for such listing through the state historic preservation office (SHPO).

b. Property designated as of historic significance to a district listed in the National Register of Historic Places or eligible for such designation by being located in an area previously surveyed and evaluated as eligible for the National Register of Historic Places.

c. Property or district designated as a local landmark by a city or county ordinance.

d. Any barn constructed prior to 1937.

52.18(2) *Application and review process for the property rehabilitation credit.* Taxpayers who want to claim an income tax credit for completing a property rehabilitation project must submit an application for approval of the project. The application forms for the property rehabilitation credit may be requested from the State Tax Credit Program Manager, State Historic Preservation Office, Department of Cultural Affairs, 600 E. Locust, Des Moines, Iowa 50319-0290. The telephone number for this office is (515)281-4137. Applications for the credit will be accepted by the state historic preservation office on or after July 1, 2000, until such time as all the available credits allocated for each fiscal year are encumbered. For the fiscal year beginning on July 1, 2000, and ending June 30, 2001, $2.4 million was appropriated for property rehabilitation tax credits for that year.

Applicants for the property rehabilitation credit must include all information and documentation requested on the application forms for the credit in order for the applications to be processed.

The state historic preservation office (SHPO) is to establish selection criteria and standards for rehabilitation projects involving eligible property. The approval process is not to exceed 90 days from the date the application is received by SHPO. To the extent possible, the standards are to be consistent with the standards of the United States Secretary of the Interior for rehabilitation of eligible property that is listed on the National Register of Historic Places or is designated as of historic significance to a district listed in the National Register of Historic Places.

The selection standards are to provide that a taxpayer who qualifies for the rehabilitation investment credit under Section 47 of the Internal Revenue Code shall automatically qualify for the state property rehabilitation credit to the extent that all the property rehabilitation credits appropriated for the fiscal year have not already been awarded.

Once SHPO approves a particular rehabilitation credit project application, the office will encumber an estimated rehabilitation credit under the name of the applicant(s) for the year the project is approved.

52.18(3) *Computation of the amount of the property rehabilitation credit.* The amount of the property rehabilitation credit is 25 percent of the qualified rehabilitation costs made to eligible property in a project. Qualified rehabilitation costs are those rehabilitation costs approved by SHPO for a project for a particular taxpayer to the extent those rehabilitation costs are actually expended by that taxpayer.

In the case of commercial property, rehabilitation costs must equal at least 50 percent of the assessed value of the property, excluding the value of the land, prior to rehabilitation. In the case of residential property or barns, the rehabilitation costs must equal at least $25,000 or 25 percent of the fair market value, excluding the value of the land, prior to the rehabilitation, whichever amount is less. In computing the tax credit for eligible property that is classified as residential or as commercial with multifamily residential units, the rehabilitation costs are not to exceed $100,000 per residential unit. In computing the tax credit, the only costs which may be included are the rehabilitation costs incurred between the period ending on the project completion date and beginning on the later of either the date of issuance of approval of the project or two years prior to the project completion date.

For purposes of the property rehabilitation credit, qualified rehabilitation costs include those costs properly included in the basis of the eligible property for income tax purposes. Costs treated as expenses and deducted in the year paid or incurred and amounts that are otherwise not added to the basis of the property for income tax purposes are not qualified rehabilitation costs. Amounts incurred for architectural and engineering fees, site survey fees, legal expenses, insurance premiums, development fees, and other construction-related costs are qualified rehabilitation costs to the extent they are added to the basis of the eligible property for tax purposes. Costs of sidewalks, parking lots, and landscaping do not constitute qualified rehabilitation costs. Any rehabilitation costs used in the computation of the property rehabilitation credit are not deductible for Iowa income tax purposes.

For example, the basis of a commercial building in a historic district was $500,000, excluding the value of the land, before the rehabilitation project. During a project to rehabilitate this building, $600,000 in rehabilitation costs were expended to complete the project and $500,000 of those rehabilitation costs were qualified rehabilitation costs which were eligible for a rehabilitation credit of $125,000. Therefore, the basis of the building for Iowa income tax purposes was $600,000 and the basis of the building for federal income tax purposes was $1,100,000. The $500,000 in qualified rehabilitation costs that were used to compute the rehabilitation credit are not deductible on the Iowa income tax return as a current expense in the year expended or through depreciation of the property that was rehabilitated. It should be noted that this example does not consider any possible reduced basis for the building for federal income tax purposes due to the rehabilitation investment credit provided in Section 47 of the Internal Revenue Code. If the building in this example were eligible for the federal rehabilitation credit provided in Section 47 of the Internal Revenue Code, the basis of the building for Iowa tax purposes would not be affected by the federal credit.

52.18(4) *Completion of the property rehabilitation project and claiming the property rehabilitation tax credit on the Iowa return.* After the taxpayer completes an authorized rehabilitation project, the taxpayer must get a certificate of completion of the project from the state historic preservation office of the department of cultural affairs. After verifying the taxpayer's eligibility for the rehabilitation credit, the state historic preservation office, in consultation with the Iowa department of economic development, is to issue a property rehabilitation tax credit certificate which is to be attached to the taxpayer's income tax return for the tax year in which the rehabilitation project is completed. The tax credit certificate is to include the taxpayer's name, the taxpayer's address, the taxpayer's tax identification number, the address or location of the rehabilitation project, the date the project was completed, and the amount of the property rehabilitation credit. In addition, if the taxpayer is an S corporation, where the tax credit is allocated to the shareholders of the corporation, a list of the shareholders and the amount of credit allocated to each shareholder should be provided with the certificate. The tax credit certificate should be attached to the income tax return for the period in which the project was completed. If the amount of the property rehabilitation tax credit exceeds the taxpayer's income tax liability for the tax year for which the credit applies, the taxpayer is entitled to a refund of the excess portion of the credit at a discounted value. However, the refund cannot exceed 75 percent of the allowable tax credit. The refund of the tax credit is to be computed on the basis of the following table:

Annual Interest Rate	Five-Year Present Value/Dollar Compounded Annually
5%	$.784
6%	$.747
7%	$.713
8%	$.681
9%	$.650
10%	$.621
11%	$.594
12%	$.567
13%	$.543
14%	$.519
15%	$.497
16%	$.476
17%	$.456
18%	$.437

EXAMPLE: The following is an example to show how the table can be used to compute a refund for a taxpayer. An Iowa corporation has a rehabilitation credit of $800,000 for a project completed in 2001. The corporation had an income tax liability prior to the credit of $300,000 on the 2001 return, which leaves an excess credit of $500,000. We will assume that the annual interest rate for tax refunds issued by the department of revenue and finance in the 2001 calendar year is 11 percent. Therefore, to compute the five-year present value of the $500,000 excess credit, $500,000 is multiplied by the compound factor for 2001 which is 11 percent or .594 which results in a refund of $297,000.

52.18(5) *Allocation of the property rehabilitation credit to the shareholders of the corporation.* When the corporation that has earned a property rehabilitation credit is an S corporation where the shareholders are taxed on the income of the corporation, the property rehabilitation credit is to be allocated to the shareholders. The corporation is to allocate the property rehabilitation credit to each individual shareholder in the same pro-rata basis that the earnings or profits of the corporation are allocated to the shareholders. For example, if a shareholder of an S corporation received 25 percent of the earnings of the corporation and the corporation had earned a property rehabilitation credit, 25 percent of the credit would be allocated to the shareholder.

This rule is intended to implement Iowa Code chapter 404A and section 422.33 as amended by 2000 Iowa Acts, chapter 1194.

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